

HOUSE BILL 1216

By Fincher

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 12; Title 38; Title 39; Title 41; Title 67 and
Title 71, relative to immigration status and
security.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Immigration Compliance Act."

SECTION 2. All requirements of this act concerning immigration or the classification of immigration status shall be construed in conformity with federal immigration law.

SECTION 3. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by inserting the following as a new, appropriately designated section thereto:

(a) As used in this section, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of labor and workforce development.

(2) "Federal work authorization program" means any of the electronic verification of work authorization programs operated by the United States department of homeland security or any equivalent federal work authorization program operated by the United States department of homeland security to verify information of newly hired employees, pursuant to the federal Immigration Reform and Control Act of 1986.

(3) "Public employer" means every department, agency, or instrumentality of the state or a political subdivision of the state.

(4) "Subcontractor" includes a subcontractor, contract employee, staffing agency, or any contractor regardless of its tier.

(b) On and after July 1, 2008, every public employer shall register and participate in the federal work authorization program to verify information of all new employees.

(c)

(1) No public employer shall enter into a contract for the physical performance of services within this state unless the contractor registers and participates in the federal work authorization program to verify information of all new employees.

(2) No contractor or subcontractor who enters a contract with a public employer shall enter into such a contract or subcontract in connection with the physical performance of services within this state unless the contractor or subcontractor registers and participates in the federal work authorization program to verify information of all new employees.

(3) Paragraphs (1) and (2) of this subsection shall apply as follows:

(A) On and after July 1, 2008, with respect to public employers, contractors, or subcontractors of 500 or more employees;

(B) On and after July 1, 2009, with respect to public employers, contractors, or subcontractors of 100 or more employees; and

(C) On and after July 1, 2010, with respect to all public employers, contractors, or subcontractors of 15 or more employees.

(d) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(e) Except as provided in subsection (f), the commissioner shall prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this section and shall publish such rules and regulations on the department of labor website.

(f) The commissioner of transportation shall prescribe all forms and promulgate rules and regulations deemed necessary for the application of this section to any contract or agreement relating to public transportation and shall publish such rules and regulations on the department of transportation website.

SECTION 4. Tennessee Code Annotated, Title 39, Chapter 13, Part 3, is amended by inserting the following as a new, appropriately designated section thereto:

(a) As used in this section, unless the context otherwise requires:

(1) "Coercion" means:

(A) Causing or threatening to cause bodily harm to any person, physically restraining or confining any person, or threatening to physically restrain or confine any person;

(B) Exposing or threatening to expose any fact or information that if revealed would tend to subject a person to criminal or immigration proceedings, hatred, contempt, or ridicule;

(C) Destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of any person; or

(D) Providing a controlled substance, as such term is defined in title 39, chapter 17, part 4, to such person;

(2) "Deception" means:

(A) Creating or confirming another's impression of an existing fact or past event which is false and which the accused knows or believes to be false;

(B) Maintaining the status or condition of a person arising from a pledge by that person of his or her personal services as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined, or preventing a person from acquiring information pertinent to the disposition of such debt; or

(C) Promising benefits or the performance of services which the accused does not intend to deliver or perform or knows will not be delivered or performed. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this Code section;

(3) "Labor servitude" means work or service of economic or financial value which is performed or provided by another person and is induced or obtained by coercion or deception; and

(4) "Sexual servitude" means any sexual contact, as defined in Section 39-13-501, for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age.

(b) A person commits the offense of trafficking a person for labor servitude when that person knowingly subjects or maintains another in labor servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of labor servitude.

(c) A person commits the offense of trafficking a person for sexual servitude when that person knowingly subjects or maintains another in sexual servitude or

knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of sexual servitude.

(d) A violation of subsection (b) is a Class E felony unless the offense is committed against a person under the age of 18 years, in which case it is a Class D felony.

(e) A violation of subsection (c) is a Class B felony.

(f) Each violation of this section shall constitute a separate offense and shall not merge with any other offense.

(g) A corporation may be prosecuted under this section for an act or omission constituting a crime under this section only if an agent of the corporation performs the conduct which is an element of the crime while acting within the scope of his or her office or employment and on behalf of the corporation and the commission of the crime was either authorized, requested, commanded, performed, or within the scope of his or her employment on behalf of the corporation or constituted a pattern of illegal activity that an agent of the company knew or should have known was occurring.

SECTION 4. Tennessee Code Annotated, Title 38, Chapter 8, Part 1, is amended by inserting the following as a new, appropriately designated section thereto:

(a) As used in this section, "peace officer" means any full-time police officer, part-time police officer, temporary police officer, reserve police officer, auxiliary police officer, private special deputy or special deputy as defined in Section 38-8-101.

(b) The governor, or the governor's designee, is authorized and directed to negotiate the terms of a memorandum of understanding between the state and the United States department of justice or department of homeland security, or any subsequent department, concerning the enforcement of federal immigration and customs laws, detention and removals, and investigations in this state.

(c) The governor, or the governor's designee, shall designate appropriate peace officers to be trained pursuant to the memorandum of understanding provided for in subsections (b). Such training shall be funded pursuant to the federal Homeland Security Appropriation Act of 2006 or any subsequent source of federal funding. The provisions of this subsection shall become effective upon such funding.

(d) A peace officer certified as trained in accordance with the memorandum of understanding entered into pursuant to this section is authorized to enforce federal immigration and customs laws while performing within the scope of his or her authorized duties.

SECTION 5. Tennessee Code Annotated, Title 41, Chapter 4, is amended by inserting the following as a new, appropriately designated section thereto:

(a) When a person is charged with any felony, or with driving under the influence pursuant to Section 55-10-401, and is confined for any period of time in a county jail, a municipal jail, a jail operated by a metropolitan form of government, or any other local or municipal correctional facility, then a reasonable effort shall be made to determine the nationality of the person so confined.

(b) If the prisoner is believed to be a foreign national, then the sheriff, jailer, or other designated officer shall make a reasonable effort to verify that the prisoner has been lawfully admitted to the United States and if lawfully admitted, that such lawful status has not expired. If verification of lawful status cannot be made from documents in the possession of the prisoner, verification shall be made within forty-eight (48) hours through a query to the Law Enforcement Support Center (LESC) of the United States department of homeland security or such other office or agency designated for that purpose by the United States department of homeland security. If the prisoner is

determined not to be lawfully admitted to the United States, the sheriff, jailer, or such other designated officer shall notify the United States department of homeland security.

(c) Nothing in this section shall be construed to deny a person bond or to deny release from confinement when such person is otherwise eligible for release.

SECTION 6. Tennessee Code Annotated, Section 67-4-2006, is amended by inserting the following as a new subsection (e) thereto:

(e)

(1) As used in this subsection, unless the context otherwise requires:

(A) "Labor services" means the physical performance of services in this state;

(B) "Lawful resident alien" means a person who is entitled to lawful residence in the United States pursuant to the federal Immigration and Naturalization Act; and

(C) "Lawful resident verification information" means the documentation that is required by the United States department of homeland security when completing the employment eligibility verification form commonly referred to as the federal "Form I-9".

(2) On and after January 1, 2008, for the purpose of calculating net earning or net loss, no taxpayer may deduct or receive a credit for remuneration provided to any individual for labor services in an amount equal to or exceeding six hundred dollars (\$600) per annum unless such individual is a lawful resident alien for whom that taxpayer has maintained documentation indicating either that:

(A) The individual supplied the taxpayer with lawful resident verification information; or

(B) The taxpayer verified the immigrant status of the individual prior to employment by using the federal electronic work authorization verification service provided by the United States department of homeland security pursuant to the federal Basic Pilot Program Extension and Expansion Act of 2003.

(3) This subsection shall apply whether or not an Internal Revenue Service Form 1099 is issued in conjunction with the wages or remuneration and regardless of the individual's status as an employee, contractor, subcontractor or otherwise.

(4) This subsection shall not apply with respect to any individual hired by the taxpayer prior to January 1, 2008.

(5) This subsection shall not apply to any taxpayer where the individual being paid is not directly compensated or employed by said taxpayer.

(6) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this subsection.

SECTION 7. Tennessee Code Annotated, Title 4, is amended by inserting Sections 8 through 10 below as a new, appropriately designated chapter thereto.

SECTION 8. It is the public policy of the state of Tennessee and the purpose of this chapter that all persons eighteen (18) years of age or older shall provide proof that they are lawfully present in the United States prior to the receipt of certain public benefits.

SECTION 9. As used in this chapter, unless the context otherwise requires:

(1) "Emergency medical condition" has the same meaning as provided in 42 U.S.C. Section 1396b(v)(3);

(2) "Federal public benefits" has the same meaning as provided in 8 U.S.C. Section 1611; and

(3) "State or local public benefits" has the same meaning as provided in 8 U.S.C. Section 1621.

SECTION 10.

(a) Except as provided in subsection (c) of this section or where exempted by federal law, on or after July 1, 2008, every agency or political subdivision of this state shall verify the lawful presence in the United States of any natural person eighteen (18) years of age or older who has applied for state or local public benefits or for federal public benefits that are provided by or administered by an agency or political subdivision of this state.

(b) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(c) Verification of lawful presence under this section shall not be required:

(1) For any purpose for which lawful presence in the United States is not required by law, ordinance, or regulation;

(2) For obtaining health care items and services that are necessary for the treatment of an emergency medical condition of the person involved and that are not related to an organ transplant procedure;

(3) For short-term, noncash, in-kind emergency disaster relief;

(4) For public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;

(5) For programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter care, so long as such programs, services or assistance:

(A) Deliver noncash, in-kind services at the community level, including through public or private nonprofit agencies;

(B) Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(C) Are necessary for the protection of life or safety.

(6) For prenatal care; or

(7) For postsecondary education, whereby the Tennessee Higher Education Commission shall set forth, or cause to be set forth, policies regarding postsecondary benefits that comply with all federal law including but not limited to public benefits as described in 8 U.S.C. Section 1611, 1621, or 1623.

(d) An agency or a political subdivision shall verify the lawful presence in the United States of each applicant eighteen (18) years of age or older for federal public benefits or state or local public benefits by requiring the applicant to execute an affidavit stating that the applicant is a United States citizen or legal permanent resident or that the applicant is otherwise lawfully present in the United States pursuant to federal law.

(e) For any applicant who has executed an affidavit that he or she is an alien lawfully present in the United States, eligibility for benefits shall be made through the Systematic Alien Verification of Entitlement (SAVE) program operated by the United States department of homeland security, or the federal electronic work authorization verification service provided by the United States department of homeland security pursuant to the federal Basic Pilot Program Extension and Expansion Act of 2003, or

such other successor immigration status verification program as may be designated by the United States department of homeland security. Until such eligibility verification is made, the affidavit may be presumed to be proof of lawful presence for the purposes of this section.

(f) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in an affidavit executed pursuant to subsection (d) of this section commits the offense of aggravated perjury as defined in Section 39-16-703. It shall constitute a separate violation of Section 39-16-703 each time that a person receives a public benefit based upon such a statement or representation.

(g) Agencies or political subdivisions of this state may adopt variations to the requirements of this section to improve efficiency or reduce delay in the verification process or to provide for adjudication of unique individual circumstances where the verification procedures in this section would impose unusual hardship on a legal resident of Tennessee.

(h) It shall be unlawful for any agency or a political subdivision of this state to provide a federal benefit or a state or local public benefit in violation of this section. Each state agency or department that administers any program that provides state or local public benefits shall provide an annual report with respect to its compliance with this section to the governor and to the speakers of the senate and house of representatives by no later than February 1 of each year.

(i) Any and all errors and significant delays in using the federal "SAVE" verification program shall be reported to the United States department of homeland security and to the Tennessee secretary of state. The secretary of state shall monitor the SAVE program and its verification application errors and significant delays and shall report to the governor and to the speakers of the senate and house and representatives

by no later than February 1 of each year regarding the frequency of such errors and delays and whether such errors and delays are preventing the receipt of benefits by legal residents of Tennessee.

SECTION 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 12. This act shall take effect July 1, 2007, the public welfare requiring it.